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HISTORY.

HISTORIA vero testis temporum, lux veritatis, vita memoriæ, magistra vitæ, nuntia vetustatis, qua voce alia, nisi Oratoris, immortalitati commendatur. CICERO DE ORATORE.

CHAPTER XVIII.

THE legislature of Massachusets completely concurred in the sentiments expressed by the other states, but proceeded in a more deliberate, and solemn, and, therefore, more forcible manner. Of all the colonies, the New-England provinces owed least to the mother country. Compelled, as has been observed before, to seek, somewhere, a refuge from persecution, their forefathers had, at their own expence, found that refuge, and effected settlements in the wilds of that country. On looking back to the first settling of the respective provinces, the other states found many motives of gratitude to assuage or lull their resentment; the people of New-England found, in the past wrongs of their ancestors, matter rather to inflame, than mitigate, their resentment. The inhabitants of Plymouth, the place where the first settlers landed, distinguished themselves, on this occasion, by the

spirited instructions which they gave their representative,* in which will be found, the bold, yet temperate, language of men resolved to be free...." You, sir (said they) represent a people, who are not only descended from the first settlers of this country, but inhabit the very spot they first possessed. Here was first laid the foundation of the British empire, in this part of America, which, from a very small beginning, has increased and spread in a manner very surprising, and almost incredible, especially when we consider that all this has been effected *without the aid and assistance of any power on earth;* that we have defended, protected, and secured ourselves against the invasions and cruelty of savages, and the subtlety and inhumanity of our inveterate, and natural enemies, the French; and all this without the appropriation of any tax by stamps, or stamp act laid upon our fellow subjects in any part of the king's dominions, for defraying the expence thereof. This place, sir, was, at first, the asylum of liberty; and, we hope, will ever be preserved sacred to it, though it was then no more than a barren wilderness, inhabited only by savage men and beasts. To this place our fathers (whose memories be revered) possessed of the principles of liberty in their purity, disdaining slavery, fled to; enjoy those privileges, which they had an undoubted right to, but were deprived of, by the hands of violence and oppression, in their native country. We, sir, their posterity, the free-holders, and other inhabitants of this town, legally assembled for that purpose, possessed of the same sentiments, and retaining the same ardour for liberty, think it our indispensible duty, on this occasion, to express to you those, our sentiments of the stamp act, and its fatal consequence to this country; and to enjoin upon you, as you regard, not only the welfare, but the very being of this people, that you (*consistent with our allegiance to the king*, and relation to the government of Great-Britain) disregarding

* Mr. Thomas Foster.

all proposals for that purpose, exert all your power and influence in opposition to the stamp act; at least till we hear the success of our petitions for relief. We, likewise, to avoid disgracing the memories of our ancestors, as well as the reproaches of our own consciences, and the curses of posterity, recommend it to you, to obtain, if possible, in the honorable house of representatives of this province, a full and explicit assertion of our rights, and to have the same entered on their public records, that all generations yet to come, may be convinced, that we have, not only a just sense of our rights and liberties; but that we never, with submission to Divine Providence, will be slaves to any power on earth."....The people, universally, in their town meetings, gave to their representatives, similar instructions, to oppose the stamp act, and the consequence was, that the assemblies, acting up to the spirit of the people, passed vigorous resolutions, denying the right of taxation to exist in any body but their own. That of Massachusets propounded the expediency of a general continental Congress of members, from all the provinces, to meet for the purpose, passed a resolution to that effect, and even proposed the place where, and the day when, such a Congress should meet. This bold, and decisive measure, so expressive of deliberate determination, was not acceded to by the provinces without some hesitation....it was too hazardous a step to be rashly taken...some wavered...some were divided in their opinions upon it...the dubious, however, were soon confirmed, and the dissenting either brought over, or subdued by the example of South-Carolina, whose assembly seconded the proposition of Massachusets, and influenced those of the other provinces to comply also, with the exceptions of North-Carolina and Virginia, whose legislatures were not, at the time, in session; and of New-Hampshire, who, though she joined in the general opposition to the stamp act, declined sending a deputy to the Congress.

ANNO 1765. Accordingly on the day appointed, in October, 1765, the first Congress met at New-York. It consisted of twenty-eight deputies, sent from the following nine States:

Massachusets,
Rhode-Island,
Connecticut,
New-York,
New-Jersey,
Pennsylvania,
Delaware,
Maryland,
South-Carolina.

The first proceeding of this Congress, was a declaration of the rights of the colonists, and a delineation of their grievances. This memorable state-paper commences with the most unequivocal expressions of devotion, of affection, and of duty to his majesty's person and government, and their attachment to the protestant succession. It then goes on and avows, that it owes the same allegiance to the crown and parliament of Great-Britain, and asserts their possessing the same rights as any other subjects in the realm. It states, that it is essential to freedom and the right of Englishmen, not to be taxed without their consent, given through their representative; that the colonists, from their circumstances, could not be represented in the Commons of England; that their only representatives were those chosen in the colonies, by themselves, and that no taxes could, therefore, constitutionally, be laid, but by those representatives in their respective legislatures; that all supplies to the crown, being free-gifts of the people, no person in Great-Britain had a right to grant the property of the colonists; and that the stamp law went to subvert their rights in that respect. They then allude to the burden of duties, and restrictions on their trade, imposed by some preceeding acts of parlia-

ment, and state them to be grievous, and conclude with declaring it to be their duty to the best of sovereigns. the mother country, and themselves. to endeavour, by loyal and dutiful addresses to the king, and applications to parliament, to get the stamp act, and restraining acts, complained of, repealed. A petition to the king, a memorial to the lords, and another to the commons, were agreed to.

That nothing should be wanting on the part of Congress, which could give a spur, and at the same time, a proper direction to the spirit of the people ; they advised that agents should be appointed by every province, to solicit redress from the crown and parliament of England.

While Congress were proceeding in this firm, but well disposed temper, the colonists at large, adopted every means which they supposed would have a tendency to bring over the people of England to a just consideration of the subject, and which would induce them to make a common cause with their fellow subjects in the New World. To this end, they resolved to touch them in those interests which were most likely to affect their feelings, and to secure their opinions. In order to intimate to them what injury it was in the power of America to do to the staple strength of their commerce, associations were formed to encourage manufactures at home, and to discourage importations from Britain : in order to lay the foundation of a permanent domestic manufacture of woollen, they entered into resolutions to multiply their sheep, by abstaining from killing lambs : and universaliy proceedings, by law, were suspended, and disputes about property were referred to arbitration, in order to prevent the use of stamps.

It could not be expected that such a general and determined opposition to an act of government, could be conducted in all its parts with uninterrupted peace or moderation. Riots of a very dangerous and alarming nature, broke out occasion-

ally in different places, particularly in the large towns; but even those, however blameable, and to be lamented, contributed to reflect honor upon the leading persons of the community, who shewed consummate address in managing and controuling, though they could not entirely prevent the excesses attendant on the vigorous spirit of opposition which they had infused into the people.

Such were the transactions in America, which brought things in Great-Britain, to that state in which we left them, under the administration of the marquis of ROCKINGHAM*.

The repeal of the stamp act, was not only received with joy in the colonies, but gave great satisfaction in London. The emotions of a whole people, upon any sudden event, whether it be propitious or unfortunate, are rarely moderate. The city of London was illuminated, and the joy of the people, in America, was exhibited in every form of rejoicing, to which human creatures in the tumultuous feelings of gratitude to Heaven, and social benevolence to each other, have recourse for expression. The churches were thrown open, thanksgivings were poured forth from every mouth; and the acknowledgments and praises of a whole people were heard in one loud voice ascending to the throne of mercy. Not only were all resentments buried in brotherly love and amity, but all memorials of it effaced; and its very badges, laid as a sacrifice, upon the altar of charity. All the clothing, which in their active, ardent and energetic opposition, they had manufactured at home, were now thrown off, and given to the poor, in order to make way for more large importations, as a more bounteous testimony of their gratitude. No less truly than elegantly, has it been said by a repectable historian,† "that so sudden a calm recovered after so violent a storm, is without a parallel in history." But if it was sudden, it was treacherous: the storm was

* See page 214.

† Ramsay.

too short and indecisive to exhaust the elementary principles by which it was engendered. The skillful eye might yet perceive in the east from which it had blown the dire *ecnephia*, sojourning on the verge of the horizon. There yet evidently lurked in the cabinet of St. James's, principles, which though concealed, were unalterable, and designs which only waited for a change of instruments to be carried into effect. The same inauspicious persons who beguiled Mr. GRENVILLE into committing the stamp act, and from necessity allowed the marquis of ROCKINGHAM to procure its repeal were ready at hand, to take advantage of the first opportunity which time or chance should throw in their way, and of the first proselyte to their principles, with talents and influence, to accomplish it; to bring back the legislative war into America, and to revive the fatal unproductive strife about taxation. The power to do so, was recognized even in the preamble of the bill, repealing the stamp act.

It seems, at this day, extraordinary, that any enlightened persons in America, could have been so blind as not to perceive the intentions of the British cabinet, even in the management of the repeal. The voice of the people of England, as well as that of America, was too loud and peremptory to be resisted. No direct compromise would suffice, nothing less than a repeal would satisfy the empire. The virtuous minister, who softened the obstinacy of the inner cabinet, was either no match for their cunning, or being unable to accomplish the whole, and therefore was contented to effect that part which he could, was negociated into an admission into the bill itself, of a recognition of the principle which contained the seeds of controversies similar to that which he was now settling....namely, the unlimited supremacy of parliament over America. Nor was this all; the act itself was named from the purpose which the cabinet had in view, and was called "a declaratory act;" and though it

went to relieve the colonies from immediate practical oppression, was, in its nature, infinitely more hostile to their independence, that the stamp act itself. One was limited, the other was indefinite and boundless, and, at one stroke of the pen, declared away and annihilated all that had been done by the Americans, in assertion of their constitutional rights; enacting, that the British parliament had, and of course ought to have, power to bind the colonies in all cases whatsoever. It were vain to argue about right in the abstract, when there is power to maintain it: the power cuts the argument short. Where the right, exercised by power, becomes a grievance, it were fruitless logomachy to reason about it. The power must first be subdued, and then argument becomes unnecessary. The eagerness of the colonists to be relieved from the imposition of stamp duties, made them unwilling to see the evils that lurked under the repeal, with its concomitants, or to attribute any dark purpose to the framers of it. In a verbal declaration of abstract right, the mass of them were neither qualified nor willing to discover any remote mischief, while they received along with it a practical proof of repentance for past injuries, and relief from present wrongs. On the other hand, the British cabinet mis-construing the good humoured reception given to the repeal, into a facility of temper which could, at any time, if necessary, be moulded to their will, left the claims on one side, and the rights on the other, so unsettled and indefinite, that every day added to the accumulation of circumstances, which, it might be foreseen, would ultimately bring the question of right to the decision of power; and which, at last, really ended in a war, a revolution, and independence.

Great as the joy of the colonists was, there were not wanting among them patriots, who had penetration enough to see the drift of the efficient leaders of the British administration; while, on theother hand, there were those, whose satisfaction at the repeal of the stamp act, gradually, but not slowly sub-

sided into a temper of no favorable kind towards the conduct of administration. The commercial regulations, which had occasioned so much vexation, still remained; and in the trading towns, particularly those in the northern provinces, excited little less resentment and disgust than the stamp act, itself. In truth, the tenacious assumptions of the British government...the imbecility of its councils...the perplexity and inconsistence of its management...the insincerity with which their equivocal conduct, their alternations of imposition, and concession, tinctured their intentions, seem to have extinguished all cordiality: and, however willing the colonies may have been to repose confidence in the mother country; and, however deserving the people of England were of that confidence, it was forbidden by the conduct of the all-moving cabinet, which, at this day, appears rather as if studiously designed to inflame discontent into insurrection, than intended to allay the ferments, which their indiscretion, not to say worse of it, had excited in the provinces. Not only the repealing-law, contained a peremptory declaration of a right to re-enact the stamp-bill, while the invidious restraining duties upon commerce remained; but the minister accompanied it with a resolution of parliament, that the damages sustained by endeavouring to execute the stamp act, should be reimbursed by the provinces in which they had been sustained.

Had the British ministers been as sagacious and provident, in accomplishing their purposes, as they were fruitful in devising acts of oppression, they would have taken care not to tamper, in this way, with the colonies, until they were prepared to make resistance to taxation hopeless; they would have foreseen, that a single repulse would decide every thing against them; they would have considered, that the Americans would not only derive courage, confidence, and elation from every advantage; but, that from the various collisions of mind, their information would be increased, and their intellectual powers sharpened, and that the discus-

sion and examination of political rights would be rendered familiar to them. In a word, they ought to have known, that in every contest they were instructing them in the use of their own weapons; and even in any victory they might gain, teaching them to vanquish. Had they wished to do all this, they could not have acted more effectually to that purpose, than they did. The injuries sustained by opposition to the stamp act, were chiefly felt in Massachusetts; the most unpropitious spot, at that time (as they ought to have known) for trying fresh experiments upon the temper of the people. The house of representatives of that province, at first resented the proposition of parliament with a spirit, such as might have been expected from them; but, in a second session, having it intimated to them, that parliament would enforce obedience, they stifled their resentment, in order to avoid controversy. A circumstance this, which may, perhaps, serve as an ingredient for future historians, to shew that so far from the people of New-England having wished for a separation from the mother country, long antecedent to the stamp act, as has been said, they were prompt to make great sacrifices for the maintainance of harmony between them. But though the legislature complied with the requisition of parliament, in that respect, the people were fretted by it; and it no doubt added considerably to the exasperation of temper, with which they beheld the pertinacious attempts at encroachment made by the British government. The whole colour of the public mind took a tincture from those feelings; and their successful resistance to the stamp act emboldened and inspired them with ideas of their own strength, of their importance in the commercial world, and of their consequence in Great Britain; and, while their pride whispered to them, all those flattering circumstances, they got the habit of making comparisons between the dimensions of their immense continent and the small island of Britain, not at all to the advantage of the latter.

An incident, in itself, of little consequence, but, which derived importance from the temper of the colonists, and the symptoms it bore upon the face of it, of the old dictatorial assumption of the British government over the public purse of America, contributed to increase the vexation of the colonists, and to induce among them the habit of measuring their strength with the mother country, and contemplating, as a thing possible, resistance to her encroachments, and perhaps, ultimate independence. The king's governor of the province of Massachusets, being applied to for supplies, for two companies of artillery, which had been driven by stress of weather, into Boston port, laid the application before his council, who gave it as their opinion, that the supplies should be granted; in consequence of which, the governor did grant them, and they were disbursed from the treasury, by his order. This transaction, on the part of the governor, was highly disapproved of by the provincial representatives, who said that the executive had no right to issue money out of the treasury, but under authority of the legislative acts of the province; and they particularly resented his having avowed that he had taken the step he did *in pursuance of an act of parliament.* They had a right to be surprised at this new encroachment, made upon the old grounds, which, they hoped, had been abandoned.

As, by this incident, the wound, which had been but lately closed, and was only in the inchoate process of healing, was made to fester anew, on the part of the Americans; so the enflamed representation of it, sent over to ministers, by the governor, produced very disagreable sensations in the mother country; where, a very considerable body of men, were still prone to the experiment of taxing the colonies. The king, who was, as much as ever, under the influence of lord BUTE, and whose pride was galled by the repeal of the stamp act, seems to have been inflexible upon the right; and he, and those who thought as he did, were

exasperated by this dauntless display of high temper and loftiness in the colonies. Taken altogether, those proceedings, on the part of the Americans, may, perhaps, have accelerated; but certainly did not give birth to what followed. If that particular step had not been taken, by them, at that time, they would be urged to one of the same nature, at another. When there was an unalterable determination, on the one side to exact, and on the other to refuse, it was impossible to preserve the question long, from the issue of the sword. It was not the amount exacted, but the principal upon which it was demanded, that alarmed the colonists. Indeed, the smaller the sum, the greater must have been their suspicion, the sum was only sixty pounds; it was natural, therefore, for the colonists to feel, that it was not the money, but the establishment of a precedent, that was wanting, on the part of the British executive: it seemed, to them, therefore, fraught with subtelty. The concession of the provincial legislature of that sum, small though it was, on the principle stated by governor BERNARD, viz....*in pursuance of an act of parliament*, was as complete an acknowledgment of the right of the British parliament to tax America, as submission to the stamp act itself, could have been.

The opinions and feelings of the British, and the colonies, on this occasion, were precisely such as arise upon every undecided right, where the interests of one side, clashes with that of the other....each believed itself right, because its interest was involved in it; and, whether, really, right or wrong, was resolved to maintain its ground upon the question. No doubt that man must have had an extraordinary facility, in bending great leading principles to convenience, who would maintain, that an unrepresented people might lawfully, or justly be taxed.

Such, however, is the nature of man, and such the blindness and the temerity, with which he rushes upon enterprizes, at the suggestions of ambition, avarice or pride, that the

more impolitic, and impracticable the taxing of the colonies appeared, the more did it become a favorite topic with certain persons in the mother country. The will was fixed in their bosoms; but the want of power to accomplish it, damped it for the time, and kept it from blazing out in practical effort. This difficulty, however, was, at length, supposed to be superceded....Mr. CHARLES TOWNSHEND* pledged himself, in the house of commons, to raise, by act of parliament, a revenue from the colonists without giving them offence; and, on his suggestion, a bill was brought in, laying duties on tea, glass, painter's colours, and paper, imported into the colonies from Great-Britain. This the devisers of it, hoped to render palatable, by appropriating the produce to the payment of the salaries of the officers of government in America; but the veil was too thin for the keen optics of the colonists, who plainly saw that it was an internal tax, and was made for the purpose of establishing a precedent for raising a revenue, by parliamentary taxation, which might, afterwards, be carried to any length. Had the thing been attempted before the stamp act, it might, perhaps, have escaped observation; but the colonists being now rendered suspicious, and being determined to scrutinize every thing which came from that quarter, took the alarm, and determined to oppose its execution.

* For a character of this gentleman, see the extracts in No. VII.

CHAPTER XIX.

HISTORY OF THE PASSING TIMES.

CONGRESS.

JUDGE CHASE's IMPEACHMENT.

[Continued from page 284.]

THE next articles, in order and importance, are those which relate to the trial of James Thompson Callender, at Richmond, in Virginia; those are, the third, fourth and fifth, for which [see the appendix.]

On these articles the prosecutors said, that though there was no life at stake, privileges no less sacred had been violated by Mr. Chase, who, on the trial of Callender, exhibited something unusual in judicial proceedings; namely, a determination, on the part of the judge, to convict; and a studied endeavor to bring shame on the counsel that appeared for the prisoner. This charge was endeavoured to be supported, by a reference to a question put, by judge Chase, to the jurors. Upon what other ground, the counsel for the prosecution asked, than that of a determination to convict, could it be accounted for, that the jurors were asked, whether they had formed an opinion, upon what they had never seen; when it was evident, that though each juror might have formed an opinion, which would go to the conviction of Callender, yet they were obliged to answer that question in the negative. This the counsel considered an evasion, by which the disqualification of the jurors, however insuperable it might be, was prevented from its legal operation, and the constitutional right to an impartial jury was superceded. They insisted, that Mr. Basset, one of

those whom the judge permitted to be on the jury, in that trial, was an illegal juror; for, although, he had not declared that he thought Callender guilty, yet he did so in fact, for he had owned that he had formed an unequivocal opinion, that the author of "*The Prospect Before Us*" came under the sedition law; and every one knew that that was the book for which Callender was indicted. To the defence set up, that the opinion given by Mr. Basset, was only founded in representation....the same might be said in almost every case, because few are spectators of the perpetration of offences, and, therefore, opinions of such things, in general, must be grounded entirely on representation: and, as to the rule laid down in his defence, by the respondent, that the opinion of a juror must be delivered, as well as formed, to disqualify him from serving, correct though they owned it to be, it could not excuse the judge, as Mr. Basset expressly stated, that he delivered the opinion which he had formed, in open court, previous to his being sworn in chief. As to the reason assigned by the judge, for over-ruling the objection of Mr. Basset, viz..." that he had not formed and delivered an opinion upon the charges in the indictment"....The counsel, for the prosecution insisted, that if that doctrine were once established, no juror could ever be disqualified, provided the judge should be pleased to refuse to suffer the indictment to be read to the jurors. In "*Bacon's Abridgement*," page 756, they said, it was laid down, that if a juror has declared any opinion, or done any thing to make him not indifferent to the parties, it was a sufficient cause of challenge. They relied upon it, in the case of Callender, that a juror had made up his mind, and had delivered his opinion, and yet was sworn on the jury.

The next point adverted to, by the counsel for the prosecution, to substantiate the charge against the judge, of a determination to convict, was the rejection of colonel Tay-

lor's evidence. From the testimony it appeared, that the reason given, at the time, by the judge, for rejecting it, was, that it did not go to a proof of the whole charge...a doctrine never before set up, in any court of law; but the judge, in his answer to this part of the impeachment, lays down, for his defence, this doctrine...." that it must first be shewn what it is in the power of the party to prove, or the evidence of the first witness shall not be received." They declared that they considered, as quite new to them, any such doctrine, as that now stated; which amounted, in fact, to this...that the admissibility of testimony, should depend upon what might afterwards be produced. They insisted that the judge had no right to know what could be proved by other subsequent witnesses; and that the question how far the evidence substantiated the truth of the charge, and that of its legality also were questions for the jury, because they were the judges, both of the law and the fact, and were to determine whether the traverser had made good his defence: In which case it was not for the judge to know whether the jury might not have thought that no other part of the charges, but that to which colonel Taylor's evidence would go, came under the sedition law. As to the assertion that judge Griffen concurred in the rejection of Taylor's evidence, it was no excuse. The concurrence of one judge could not, at all, palliate the criminality of another.

The counsel for the respondent, began their defence against those parts of the impeachment, which touch the trial of Callender, by stating that it was necessary to the justice of the case to take a view of the situation in which the judge found himself at the commencement of that trial. The sedition law had passed in 1799, and that and the alien bill had produced a ferment in the public mind. In Virginia, the sedition law was peculiarly obnoxious. The enemies of it said that it endangered the liberty of the press, in violation of the constitution. The friends of it called it a salutary

restraint, while the press, they said, was in danger from the licentious abuse of it. In this state was the public mind, in Virginia, when judge Chase arrived there a perfect stranger. Previous to his arrival, a publication, infamously disgraceful and libellous, had made its appearance in favour of a character idolized by that commonwealth. It was easy to see that a prosecution would take place, that the constitutionality of the sedition law would be contested; and, that much of the popular odium would be transferred from the law itself, not only to the makers of it, but to those who were to carry it into effect. On the trial of Callender, as was foreseen, every thing that sophistry and industry could devise, was brought into action, to defeat the operation of the law, and take the case away from the decision of the judge, whose strength of mind, and energy of character, were much to be dreaded; accordingly, exceptions were taken at every point of the cause, and when the jury were about to be sworn, the incidents arose upon which the prosecutors attempted to establish the charges under consideration.... They said, that the anxiety of the prosecutors to convict the judge, had induced them to deny the clearest principles of law, and to speak in defiance to the stubborness of fact; and they called upon the managers to point out the evidence which supported the assertion, that Basset wished to be excused from serving on the jury. On the contrary, Basset himself had sworn, that he did not object to serving on the jury: that he did not wish to ask to be excused....he only had said, that he thought it incumbent on him to mention some scruples to the court, with a view, that if they did not disqualify him by law, he might serve on the jury...he swore he had seen, in a newspaper, some extracts from "*The Prospect Before Us*," and that he thought such a book would come within the sedition law; but, he had added, that he had never seen the book, and did not know the author: and further stated, that he did not wish to be excused from serving on

the jury. Thus, the very fact, on which the guilt of the respondent was predicated, having failed in proof, the whole superstructure, of course, fell to the ground.

The learned counsel then proceeded to shew, that the argument of the counsel for the prosecution, was as unfounded in law, as in fact; and, that supposing it were true, that Basset did wish to be discharged from serving on the jury, still the judge over-ruling the objection was not contrary to law. To that end they entered into an examination of the law respecting challenges of jurors, and cited authorities to shew that the indifferency required in a juror, consisted entirely in the absence of malice or favour. "*If a juror has said, that he will find for one of the parties, it is a good cause of challenge for favour, if he so spoke from favour; but, if he did not speak it out of favour, but from his knowledge of the matter in issue, it is not a good cause of challenge.*"* "*It is no cause of challenge to a juror, that he hath said, that he will find his verdict for one of the parties, if it is not found by the triers or the court, that he spoke from favour and not from the truth of the fact.*"† Again...."*If a juror hath twenty times declared, that he will find for one of the parties, it is not a principle challenge, because he might have spoke it from his knowledge of the matter in issue, and not out of favour or malice.*"‡ Again...."*Jurors having given a verdict already, and found others guilty, on the same indictment, held to be no cause of challenge.*"§ Having laid down those principles, on some of the first law authorities, the counsel for the respondent called upon those for the prosecution, to over-rule them, if they could, or if they could not, to acknowledge them to be correct.

To support this article, a ground of the most singular kind had been taken. Say the prosecutors, judge Chase, on the trial of Fries, put this question to the jurors..." *Have*

* Rolles Abridgement, folio, 657.

† Ibidem.

‡ Ibidem, 655. And Trials Per Pais.

§ Kelynge, folio, 9. And Trials Per Pais, 178.

you formed OR *delivered an opinion?*" In the alternative; and in Callender's case, "*have you formed* AND *delivered an opinion?*" The captiousness of this objection, in a cause of such importance, completely shewed the desperate condition of the prosecutor's case. In a word, it appeared, that all Mr. Basset had said, before the trial, meant the application of the sedition law to the extracts he had read, in the newspapers, from "*The Prospect Before Us;*" but not to the questions either of Callender's being the author, or publishing with malicious intent to defame. In addition to the English authorities which had been given upon this point, the learned counsel for the respondent cited the decision of chief justice Ellsworth, in the state of Connecticut.* As to the point of a juror's declaring his opinion of the law on which a trial was founded, if such a declaration was considered a disqualification to serve, all jurors might be challenged on one side or other; but fortunately, it was not so; on the contrary, it had been adjudged, in the king's bench of England, "*not to be a sufficient cause of challenge, that a juror had declared his opinion concerning the title of the land in question;*" so, also, "*that the jury have found others guilty on the same indictment;*" or, *that a juror has declared his opinion, that the party is guilty, and will be hanged, if it appears he made such declaration from his knowledge of the cause, and not out of ill-will to the party.*"†

The respondent's counsel then contended, that granting, for argument sake, that Mr. Basset did object to serving on the jury (he himself says he did not) and, granting that they were mistaken in the law, and the managers correct in it, in contradiction to the great authorities just cited, still there was much more required from the prosecutors to sustain this article of impeachment; for they were bound to prove that judge Chase "*acted corruptly, and, with intent*

* See Kirby's Reports, folio, 427.

† 2d Hawkins' Pleas of the Crown, 418.

to oppress, and that to procure the conviction of Callender, he had overruled the objection to Basset." To establish this, the prosecutors had neither pointed to the testimony, nor so much as named the witness who gave any; and for this plain reason, because they could not. No such thing, or person existed....through the whole case, not a hint, not an insinuation, was to be found; except, indeed, the insinuations of the managers, and the inferences which they endeavoured to draw from unsupported doctrines. Had proof been to be acquired, no doubt the zeal and ability of the prosecutors would have found it out; and they would have taken care to apply it. Not having any, they were now called upon in reply, to satisfy the court upon the fact...to satisfy their country, whose high name had been used, in order that the world might determine between them.

Perhaps, a more curious argument had never been used, than one by which the managers had endeavoured to induce a conviction of the respondent. Every man, said they, is liable to punishment who acts contrary to law; and therefore, judge Chase having giving an opinion, and acted contrary to law, is liable to be punished. The respondent's counsel admitted the general principle, but (as in every general principle) with exceptions; the strongest of which, they insisted, was, that of a judge. Miserable, indeed, would it be, if every error of judgment were construed into corruption in a judge. Called into office to determine complicated cases arising from the conflicting interests of individuals; to punish the crimes and the villainies of mankind, more cannot be required of a judge, than that he should carry to the judgment seat, talents and integrity, a clear head, and a pure heart. Judges must be made of men, and of course, be incident to man's frailties and imperfections. By what code were they deemed infallable? By what means could they become so? And, if they were so, why were there such useless establishments as courts of appeal,

to rectify the errors of inferior jurisdictions? Why were not all judges punished on revisal of their decrees, if error be admitted as a proof of corruption. "If, said the respondent's council, by not erring, gentlemen mean a coincidence with popular opinion, that is easily obtained....impeach !....remove !....and, when honest men are driven from the judgment seat, pliant tools will readily be found, whose judgment will conform to the will of the majority, and who will prostrate principle to preserve office."

One manager had observed that for judge Chace "to err in so plain a case, was of itself evidence of corruption; and that the defendant must be considered guilty unless the contrary was shewn." Such a doctrine, the respondent's council said, violated law; and outraged all principle. Judge Buller had laid it down, that "*you never can infer corruption from the judgment itself, but from the opinion given.*"† Corruption being a fact of a high criminal nature, must be proved, not presumed; and, every man is presumed innocent, until he be proved to be guilty.

The respondent's counsel then proceeded to repel that part of the article, which charged judge Chase with rejecting the evidence of colonel Taylor, with intent to procure the conviction of Callender. The fact of rejecting, they admitted, but denied the doctrine, that *the court had no right* to order the questions, which were meant to be put to the witness, to be reduced to writing; and, in contradiction, maintained, that *the court had a right* to require of counsel that they should open their case...explain the nature of the evidence meant to be given....and, on the production of a witness, state what they expect to prove by such witness. The law was so laid down in the best, and the latest books. *Counsel ought not to call a witness, without first opening to the court the nature of the evidence they intend to examine*...THIS HAS BEEN OFTEN SOLEMNLY ADJUDGED, THOUGH NOT

† 1st Term Reports, 653.

STRICTLY ADHERED TO IN PRACTICE."* And again..."*No evidence ought to be admitted to any point but that on which issue is joined.*"† Thus, it appeared, the court had a legal right to know what counsel mean to prove by a witness. The question then was, whether it had acted correctly in rejecting the testimony of colonel Taylor, and for this purpose it was to be enquired, what were the questions proposed to be put to him. The first was...." did you ever hear John Adams express any sentiments favourable to monarchy, or aristocracy, and what were they?" The second..." did you ever hear Mr. Adams, while vice-president, express his disapprobation of the funding system?" The third...." do you know whether Mr. Adams, did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?" As to the first of those, if Mr. Taylor and a thousand other witnesses had proved that Mr. Adams had expressed sentiments favorable to monarchy or aristocracy, it would avail nothing, since no criminality could be inferred from them, without proving also a criminal meaning in them, first to be stated, by way of inuendo, in the pleading. Those being the whole sum of the questions to be put to Taylor, his answer, to them, could not amount to any thing as evidence, in favour of Callender's justification, which ought, as in all cases, whether in pleading, or in evidence, to go to the whole, not one part only of the charge. The isolated fact, that Mr. Adams was an aristocrat, could be no justification of the slander of Callender, neither could his being attached to the British interest, since there were many instances, in which the British and American interests might be the same. As to the second question, to wit, " whether Mr. Adams had expressed his dislike of the funding system," it had no connection with the charges in

* M'Nally's Rules of Evidence, 14.

† Ibidem, 2.

the indictment, or with any of the libellous matter alledged; and was, therefore, idle and improper. As to the third question, it was clearly an improper one: because, if the fact alledged in it were even true, it could not be proved by colonel Taylor; next because, if the fact were established, it would be wholly immaterial to the issue. And colonel Taylor's evidence was not the best which the nature of the case admitted....nor could parole evidence be legally received, on that subject: but the counsel for the respondent went still further, and said, that, if they had the best possible evidence of the fact, the judge would have departed from his duty if he had permitted the testimony, which was desired to be obtained from colonel Taylor, to be given to the jury; since no evidence ought to be given to a jury, which was not pertinent to prove the fact in issue, or some fact, from which the fact in issue might be legally inferred. According to the doctrine of the prosecutors, juries were to be every thing... judges nothing; juries were to decide, not only the law on the issue; but every question of law which might arise in the course of the cause, or on the evidence. Gentlemen seemed to forget that it was only in consequence of the right of the jury to give a general verdict, that they incidentally had the power of deciding the law in any case; but the most mad enthusiast that ever yet advocated the rights of jurors never before questioned the right of the court to determine upon the competency, or admissibility of evidence.

The specification of the prosecutors "*that judge Chase used unusual, rude, and contemptuous expressions to the prisoner's counsel,*" not being of a legal nature required no answer; and therefore the respondent's counsel paid no other attention to it, than to say, that if it were true, it was rather a violation of the principles of politeness than of the principles of law; rather a want of decorum, than the commission of a high crime and misdemeanor. They agreed, that their client had more of the "*fortiter in re,*" than of the

"*suaveter in modo*," and that his character bore a stronger resemblance to that of lord Thurlow, than that of lord Chesterfield, yet lord Thurlow was an enlightened and honest judge.

As to the specification, that *judge Chase had insinuated, that the prisoner's counsel wished to excite the public fears and indignation, and to produce insubordination to the law*, the respondents counsel asked, whether the judge was not correct in so saying; for did not the conduct of Callender's counsel tend to inflame the minds of the by-stander's, and to excite their indignation against the court; and was it not highly insulting to the judges? The evidence before the court proved it to be so; and what did the judge? Why, knowing that the people of Virginia were opposed to the sedition law; conscious that it was his bounden duty to see it executed; and convinced, from the very first step of the cause, that the object of Callender's counsel was to inflame the temper of the people, he, who well knew mankind, and had been accustomed to popular assemblies, knew, that the best way to carry the law into effect, and secure the ends of justice, was to keep the by-standers in good humour by diverting them at the expence of the very persons who were endeavouring to excite them to outrage, against him: hence the mirth, the keen wit, the humour, and the facetiousness, by which his conduct was marked during the trial; and thus their attempts to intimidate him, where, by his ingenuity, turned into a laugh at themselves. A witness emphatically testified, that *the counsel for Callender did not join in the laugh*. Here the counsel for the respondent refuted in detail the charges of rudeness; and thus the defence of the four first articles of impeachment were concluded.

[*To be continued.*]